THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.10820 OF 2006

DATED: 16.10.2006

BETWEEN:

Ali Bin Omer Yafai
And others. … petitioners

And

Municipal Corporation of Hyderabad,
Rep by its Commissioner, Hyderabad
And others … Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.10820 OF 2006

ORDER:

Heard the counsel.

The writ petition is filed for a writ of mandamus declaring the inaction of the 1st and 2nd respondents in not demolishing the extents in respect of properties of the respondents, i.e., Door Nos.8-4-394, 395, 393, 397, 398, 392 and 393/B/1, Errabgadda, Hyderabad respectively as mentioned in the plans attached to the notices vide Lr.No.75/ACP/C5/MCH/05/L5/20, 19, 21, dated 25.6.2006 issued to the respondents 3 to 7 as being illegal, arbitrary and consequently direct the 1st and 2nd respondents to forthwith demolish the said extents for the purpose of road widening between S.R.Nagar Junction to Erragadda Junction and pass such other suitable orders.

Counter affidavits were filed by respondent Nos.1 and 2 and respondent Nos.5 and 6. It is stated that the petitioners are all residents of Erragadda. It is also stated that the Municipal Corporation of Hyderabad had taken on itself road widening from S.R.Nagar junction to Erragadda junction. The Corporation proposed to have 150 feet wide road in the said area i.e., from S.R.Nagar junction to Erragadda junction so as to have free flow of traffic thereby avoiding traffic congestion, which is the order of the day on the roads. In that connection, the respondent Corporation had taken center of the existing road at Erragadda and intended to acquire 75 feet on both the

sides of the road i.e., 75 feet from western side and 75 feet from Eastern side. In furtherance to the said intention, the respondent Corporation had issued notices to the unofficial respondents, i.e., respondents 3 to 7 herein, duly enclosing a map showing the deprivation of the land. It is further stated that on perusal of the said notices, it is clear that in respect of the third respondent 43 x 40 feet land would be acquired. Likewise, in respect of 4th respondent land admeasuring 43 x 43 feet, in respect of 5th respondent 40 x40 feet, in respect of 6th respondent 40x43 feet, and in respect of 7th respondent 43x50 feet of land would be acquired. It is also stated that the road widening process of the said area already was commenced but had not come to the places for which aforementioned notices had been issued and at any moment it would come to the area in question. It is also further stated that the respondent Nos.3 to 7, with the connivance of the officials of the respondent Corporation, had internally put shutters ranging from 4 to 5 feet thereby reducing the actual extent of area/land as stated in the communications addressed by the respondent Corporation to the respondents 3 to 7, whereby the corporation expressed its intention to have the property to the extents stated therein for the purpose of road widening. Therefore, the very purpose, intention and object for which notices had been issued is being defeated by the unofficial respondents. It is further stated that the respondent Corporation having issued notices to the respondents 3 to 7, cannot connive with them and permit them to put shutters, giving a go bye to the intention stated in the notices and the plans that had been enclosed vis-à-vis area and cannot permit the respondents 3 to 7 to deprive the Corporation of their intention by permitting the respondents 3 to 7 to put up shutters depriving actual area as intended by the Corporation for the purpose of road widening.

It is also further stated that at any moment the demolition would

occur and in the event if the whole of the extents of lands as mentioned in the above said notices are not demolished, it would certainly affect the free flow of the traffic on the road and it will also amount to respondent Corporation giving a go bye to the notices that had been issued to the respondents 3 to 7 and at any rate, the respondents 3 to 7 with the connivance of the respondent officials cannot reduce the area in the manner and fashion as referred to in the affidavit filed in support of the writ petition.

In the counter affidavit filed by R.1 and R.2 it was stated that the road from Panjagutta junction to Erragadda via Ameerpet is part of National High Way and proposed as 150 feet wide in the master plan. The respondent Corporation is taking up road widening in order to ensure free flow of traffic and to achieve the width of the road indicated in the master plan. In this regard Road Development plan would be prepared by considering center line of the road as reference point but due to curvature of the road at some places, it was not possible to maintain exact center. Accordingly, the stretch of road from S.R.Nagar junction to Erragadda junction had also been taken up for road widening and in the process, out of 118 properties 47 properties are taken over and demolished under private negotiations as per Section 146 of the Hyderabad Municipal Corporation Act. It is also further stated that there are five properties in front of the petitioners' property, which are also getting affected under road widening. Initially the individual sketches served upon the affected owners by scaling the measurement from the approved road development plan. Afterwards when the actual execution of road widening work was commenced on this road, a detailed physical measurements had been taken and it had been noticed that the existing road width is 95 feet, the total is 110 feet, the balance 40 feet had been proposed to be taken over from these shops under consideration. These properties are affected to the extent of 40 feet as per site measurement, after taking an area affected under

road widening the properties are left over with 2 feet to 2.6 feet. All these owners are small shop owners having the business of selling Pooja articles, boxes etc., and their livelihood is purely depends upon these shops. It is further stated that during negotiations these shop owners i.e., respondents 3 to 7 requested to leave 8 feet so that they can continue their business and the road widening work also can be completed. Accordingly, after careful verification of road alignment, it had considered the request of the respondents 3 to 7 since it is feasible on humanitarian ground and to leave 3.6 feet width to the shops owners in order to continue their livelihood agreed to leave 3.6 feet in stead of their request for 8.00 feet and also for speedy road widening. The respondent had exercised his discretion as per the provisions of Hyderabad Municipal Corporation Act 1955 and the respondent is empowered to increase or decrease the road width on either sides of the road to achieve the width indicated in the master plan. It is also further stated that the petitioners filed the present writ petition with an ulterior motive and for their personal gain, and not for any public interest. It is further stated that the petitioners' property is behind these affected properties of the respondents 3 to 7 and the intention of the petitioners that if these properties are removed totally, their property will come on road and can benefit from the road widening without sacrificing an inch of land under road widening and the commercial value of their properties will be come more. It is also further stated that the respondent-Corporation is duty bound to act as per the provisions of the Hyderabad Municipal Corporation Act and during the process of the road widening the respondent Corporation takes various aspects into consideration in implementing and achieving the master plan. The action of the respondent Corporation in respect of taking over the properties of the respondents 3 to 7 is perfectly valid and legal. There is no harm to the interest of general

public. The grievance of the petitioners in the writ petition is totally untenable, unsustainable and non-existing.

The respondent Nos.5 and 6 also filed counter affidavit. It is stated that the petitioners brought some unsocial elements to their shops and tried to dismantle the shops on the pretext that their shops are effected in the road widening and they are acting at the behest of the officials of the respondent-Corporation. It is also further stated that the respondents 1 and 2 issued a letter No.75/KCP/C5/MCH/5/L5/21 dated 21.6.2005 which is a letter but not acquisition proceedings under the said letter they want to demolish their shops without paying any compensation or without initiating the acquisition proceedings under the act aggrieved by the said illegal act, they filed two writ petitions W.P.Nos.5037 and 5509 of 2006 questioning illegal action of the respondent Nos.1 and 2 and this Court after hearing these respondents and the respondents 1 and 2, passed the following order:

> " Having regard to the facts and circumstances of the case, the respondent is directed to initiate the proceedings for acquiring the lands either under Section 146 or by way of entering into an agreement for the payment of compensation for the structures as well as the land or if it is not possible to come to a settlement, it is open for the respondent to initiate the proceedings under Section 147 for acquiring the said land for road widening.
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> With the above direction, the writ petition is disposed of."

Several other aspects also had been narrated.

It is needless to say that it is the duty of the Municipal Corporation to take appropriate decision. In the light of the respective stands taken by the parties, liberty is given to the petitioners to make a representation to the respondents 1 and 2 highlighting all their grievances, if any, and it is needless to say that the respondents 1 and

2 to consider the same and take appropriate decision in this regard at the earliest point of time.

The writ petition is disposed of accordingly. No order as to costs.

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16.10.2006.

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